

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

KELLEY FOODS OF ALABAMA, INC.  
PLAINTIFF

\*

\*

VERSUS

CIVIL CAUSE NO. 1:04cv 1246-B

\*

MYERS NISSI & CO., INC., a corporation,  
d/b/a VERTICALSOFT  
DEFENDANT

\*

\*

**DEFENDANT'S NOTICE OF POTENTIAL CONFLICT IN TRIAL SETTINGS**

\_\_\_\_\_ **NOW INTO COURT**, through undersigned counsel, comes defendant, Myers Nissi & Co., Inc., and gives notice to this Honorable Court of a potential conflict in trial settings in the above captioned matter. Specifically, this matter is set for trial on September 11, 2006 in Dothan, Alabama. Counsel for the defendant has another trial setting in the Circuit Court of Jefferson Davis County, Mississippi in Ann Bass, as administratrix of the Estate of Rosie L. Drummond and on behalf of Carsi Stubbs and all other heirs of Rosie L. Drummond vs. Prentiss Regional Hospital & ECF, Ameris Health Systems, LLC and John Does 1 through 5, No. 2002-54 the following day, September 12, 2006. Moreover, trial counsel in both matters is Paul D. Palermo, Esq. A true and correct copy of the Agreed Scheduling Order and Trial Setting in the potential conflicting Mississippi matter is attached hereto as Exhibit "A". The parties agreed to a trial date in January, 2006, and the agreed scheduling order and trial setting document was submitted to the court on January 13, 2006. A true and correct copy of the transmittal is attached hereto as Exhibit "B". Because the court sits in multiple counties, however, the order simply was not entered until march 1, 2006, due to the court's schedule with regard to Jefferson Davis County, Mississippi.

Undersigned submits that all due diligence has been engaged to attempt settlement of both matters; however, as of the date of filing this notice, settlement in either matter appears highly unlikely. Accordingly, undersigned counsel requests such relief as may be afforded by the court, including but not limited to provision by the court of a “date certain” for trial of the instant matter during the trial term commencing September 11, 2006, which does not conflict with the trial setting in the Mississippi matter.

Respectfully submitted:

/s/ John M. Herke

JOHN M. HERKE (Ala. Bar No. HER045)

PAUL D. PALERMO (La. Bar No. 19725)

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Metairie, Louisiana 70002

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Facsimile: 504-830-7810

**Counsel for Myers Nissi & Co., Inc.**

**CERTIFICATE OF SERVICE**

\_\_\_\_\_ I HEREBY CERTIFY that I have on this 18<sup>th</sup> day of August, 2006 served a copy of the foregoing pleading on the following:

Mark Vaughan  
Cannon, Vaughn & Malloy  
Post Office Box 647  
Elba, AL 36323  
Telephone: (334) 897-3413  
Facsimile: (334) 897-3415  
[mvaughan@cannon-](mailto:mvaughan@cannon-)

Howard P. Walthall, Jr.  
Burr & Forman, LLP  
3100 Wachovia Tower  
420 North 20<sup>th</sup> Street  
Birmingham, AL 35203  
Telephone: (205) 251-3000  
Facsimile: (205) 458-5100

by facsimile and/or by mailing same via United States Mail, properly addressed and postage pre-paid and/or email.

/s/ John M. Herke

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**IN THE CIRCUIT COURT OF JEFFERSON DAVIS COUNTY, MISSISSIPPI**

**ANN BASS, as administratrix of the  
Estate of ROSIE L. DRUMMOND and on behalf of  
CARSI STUBBS and all other heirs of ROSIE L.  
DRUMMOND**

**PLAINTIFFS**

**v.**

**CASE NO. 2002-54**

**PRENTISS REGIONAL HOSPITAL & ECF,  
AMERIS HEALTH SYSTEMS, LLC,  
and JOHN DOES 1 THROUGH 5**

**DEFENDANTS**

**AGREED SCHEDULING ORDER & TRIAL SETTING**

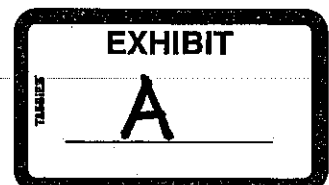
This cause came on for hearing on the motion of Defendants for a continuance or for the striking of Plaintiffs' designation of James Henry as an expert witness, including his affidavit already filed with the Court. Plaintiffs have likewise moved for a continuance, a motion unopposed by Defendants. This Court finds that a continuance and revised scheduling order will best serve the interests of justice, as follows:

(1) The trial of this cause is continued to September 12, 2006, at 9:00 a.m., at the Jefferson Davis Courthouse, Prentiss, Mississippi.

(2) The following schedule shall be followed by the parties:

(a) Friday, March 17, 2006—deadline for Plaintiff's designation of additional expert witnesses. Plaintiff shall make available for deposition any expert witnesses not previously deposed before the date of this Order no later than Friday, April 28, 2006.

(b) Friday, May 26, 2006—deadline for Defendants' designations of additional expert witnesses. Defendants shall make available for deposition any expert witnesses not previously deposed before the date of this Order no later than Friday, June 30, 2006.



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(c) Monday, July 31, 2006—deadline for service of all pre-trial motions other than motions in limine. Service upon the parties shall include service by electronic mail or facsimile for the convenience of the parties. This date shall also be the deadline for discovery in this matter, including any depositions of fact or expert witnesses. No written discovery requests shall be served less than 30 days before this date.

(d) Monday, August 14, 2006—deadline for service of all memoranda of law in response to all pre-trial motions other than motions in limine. Service upon the parties shall include service by electronic mail or facsimile for the convenience of the parties.

(e) Monday, August 21, 2006—deadline for service of all memoranda of law in rebuttal to all response memoranda of law other than memoranda of law pertaining to motions in limine. Service upon the parties shall include service by electronic mail or facsimile for the convenience of the parties.

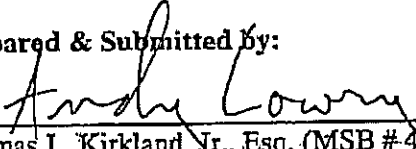
(f) Monday, August 28, 2006—deadline for motions in limine to be filed.

And this Court, finding that the above deadlines will serve the interests of justice and support a fair and just resolution of this cause, ORDERS that the above deadlines shall be, and hereby are, implemented, as recited above, and that none of the above deadlines shall be changed except by mutual agreement of the parties or by order of this Court. Defendants' motion to strike James Henry's designation and affidavit is DENIED.

SO ORDERED, this the 1 day of March, 2006.

Michael R. Eustach  
CIRCUIT JUDGE

## Prepared &amp; Submitted by:



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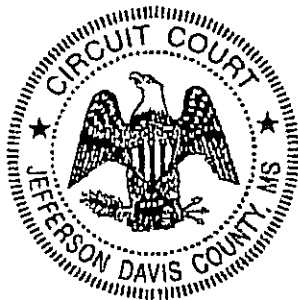
## Approved as to Form and Content:

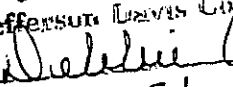


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Laurel, Mississippi 39441-1289  
Counsel for Prentiss Reg'l Hosp. & ECF, Inc.



CERTIFIED TRUE COPY  
This 17th day of August 2006  
Jerr L. Landry, Circuit Clerk  
Jefferson Davis County, Mississippi  
By  D.C.  
Min. Book 51 Page 158-760

# COPELAND, COOK, TAYLOR & BUSH

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STEPHANIE EDGAR  
STEPHANIE B. WOOD

OF COUNSEL  
ROBERT L. GOZA  
RONNIE MUSGROVE

January 13, 2006

Via United States Mail

The Honorable Michael R. Eubanks  
Jefferson Davis Circuit Court  
Post Office Box 488  
Purvis, Mississippi 39475

Re: *Bass v. Prentiss Regional Hospital & ECF*, No. 2002-54

Dear Judge Eubanks:

Enclosed is a copy of the signed *Agreed Scheduling Order* in the above-styled case. We had attached an unsigned copy to the pending *Motion to Continue or Strike* which we filed on behalf of Ameris Health Systems, LLC.

Thank you. Please do not hesitate to contact us with any questions or concerns.

Sincerely yours,

COPELAND, COOK, TAYLOR & BUSH, P.A.

Andy Lowry

Enclosure

cc: Paul Palermo, Esq. (w/ enclosure)  
Ryan Mitchell, Esq. (w/ enclosure)

